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Toshimichi Kurihara

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EXAMINER

SCHILLINGER, LAURA M

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

1 RECORD OF ORAL HEARING

2
3 UNITED STATES PATENT AND TRADEMARK OFFICE

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5
6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES

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10 Ex parte TOSHIMICHI KURIHARA and TAKASHI UEDA

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13 Appeal 2007-4429
14 Application 09/942,445
15 Technology Center 2800

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18 Oral Hearing Held: February 14, 2008

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21
22 Before KENNETH W. HAIRSTON, SCOTT R. BOALICK, and MARC S.
23 HOFF, Administrative Patent Judges

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25 ON BEHALF OF THE APPELLANTS:

26
27 KATHERINE R. VIEYRA, ESQUIRE
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33 The above-entitled matter came on for hearing on Thursday, February
34 14, 2008, commencing at 1:00 p.m., at the U.S. Patent and Trademark
35 Office, 600 Dulany Street, 9th Floor, Alexandria, Virginia, before Janice A.
36 Salas, Notary Public.

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1 THE CLERK: Calendar Number 27, Mrs. Vieyra.

2 JUDGE HAIRSTON: For the record, is your last name spelled V-I-E-
3 Y-R-A?

4 MS. VIEYRA: Yes.

5 JUDGE HAIRSTON: Okay. You can use the podium. You may
6 begin.

7 MS. VIEYRA: Okay.

8 JUDGE HAIRSTON: Is this your first hearing?

9 MS. VIEYRA: Yes.

10 JUDGE HAIRSTON: Okay.

11 MS. VIEYRA: The issue that we're dealing with on claim 1 is that the
12 103 rejection is not appropriate. Our invention is not obvious from the
13 combination of prior art Switky and Yamauchi, and specifically, none of the
14 prior art teaches a rectangular shaped resin wall.

15 Our art, if you take a look, for example, figure 9A, would indicate --

16 JUDGE HAIRSTON: Of your drawings?

17 MS. VIEYRA: Of our drawings.

18 Our drawing of figure 9A and 9B, you can see that item -- reference
19 number 63 on 9A is clearly rectangular shaped and in the cross-section, not
20 in the plan, of one skilled in the art, reading the specification and seeing this
21 figure 9A and 9B, would see that the wall is molded in the shape formed by
22 the molding.

23 And that would lead one skilled in the art to understand that our
24 rectangular-shaped wall has a rectangular cross-section.

25 The prior art cited by the Examiner shows an O-ring, a bead shape,
26 and the cross -- the so-called rectangular shape -- that the Examiner talks

1 about in figure 5 of Switky is the rectangular path. It's not the actual cross-
2 sectional shape.

3 JUDGE HAIRSTON: How does your claim distinguish between in
4 the plan and the cross-section? You said yours is rectangular in the plan -- I
5 mean, I'm sorry -- in the cross-section, right?

6 MS. VIEYRA: Yes. Ours is actually rectangular -- ours is
7 rectangular in cross-section.

8 JUDGE HAIRSTON: But rectangular shape is pretty broad, isn't it? I
9 mean, his is rectangular shape and if you look at figure 5, it's a rectangular
10 shape.

11 MS. VIEYRA: But that's the path. That's not the cross-section. If we
12 look at figures 2, 3A, 3B, 3C and if you read his description, he keeps
13 talking about an O-ring and about how his is a caulking-type material.

14 Ours is a resin -- an epoxy resin and in addition, we also talk about
15 how our wall is coated and plated on page 19 of our specification. We talk
16 about the outside of the wall having nickel plating and silver plating. His is
17 -- his is a sealant. So he's using this plastic bead as a sealant because in part
18 he's concerned with hermetic sealing of his apparatus.

19 We're claiming rectangular shape resin wall, so his is not that bead
20 element of Switky is not -- not equivalent to our resin shape -- our
21 rectangular shape resin wall.

22 JUDGE BOALICK: Is there any other support in the specification for
23 the resin wall being required to be a rectangular shape? I didn't see that
24 anywhere. As you mentioned, the drawings perhaps show that, but there's
25 nothing that seems to limit the walls. --

26 MS. VIEYRA: When we talk about the wall being a resin --

1 JUDGE BOALICK: Right but --

2 MS. VIEYRA: -- a rectangular shape.

3 JUDGE BOALICK: But why is rectangular shape in path, why
4 doesn't that completely satisfy the rectangular shaped resin wall that you've
5 claimed? It doesn't say rectangular cross-section resin wall. It just says
6 resin shape -- or rectangular shaped resin wall.

7 I guess I don't understand why the claim should be limited to
8 rectangular cross-sections. I don't see the cross-section limitation in the
9 claim.

10 MS. VIEYRA: So you think the rectangular shape refers --

11 JUDGE BOALICK: I think the term would appear broad enough to
12 encompass a rectangular path. I'm wondering why -- why should we read
13 that as cross-section only and not a rectangular path?

14 MS. VIEYRA: I'm not sure that -- because ours is a wall in the way
15 we're using it. I mean, even if you were -- even if their path were the same
16 shape, theirs is not any -- theirs would never be a wall like ours is a wall. It's
17 not the same material and it doesn't function the same way because they're
18 using -- because their whole thing is a sealant. So --

19 JUDGE HOFF: Well, why is it unfair to read a sealant as being a kind
20 of wall?

21 MS. VIEYRA: If you took his sealant and placed it -- if you used
22 what he's using, we don't think you would get the same result. In other
23 words, if you put his plastic sealant instead of our resin wall, the resulting
24 structure -- the resulting apparatus device wouldn't be the same.

25 I mean, his sealant can actually be dissolved in some cases; whereas,
26 ours is something that's structurally being used as -- as part -- you know, it's

1 being -- ours is included as part of what's being plated and it's a significant
2 part.

3 If you -- if -- and so his -- it's not functioning the same way. He's
4 sealing because he's concerned with hermetic seal. We hermetically seal
5 differently.

6 Does that answer that?

7 JUDGE HAIRSTON: Yes. Continue.

8 MS. VIEYRA: All right. Well, okay. The second issue that we have
9 is the issue of claims 9 and 11 where the prior art is not -- does not teach.
10 Claim 9 recites second holes or cutouts in the region extending through the
11 resin wall of the conductive member.

12 If you take a look at our figure 8A, and then it's more clear on 8C,
13 we're showing the cutout.

14 You can -- if you look at 8A, which shows first hole is 31 and second
15 holes and cutouts 32, 33, and then if you take a look at figure 9 again, you
16 can see on figure 9B, if you see number 32 there, it's -- the hole is in the
17 conductive member or the lead, number 30.

18 And that enables the -- they allow the resin poured into the mold to
19 flow from above the lead to below the lead, which we show here on figure
20 9A and B, and we talk about in the text on pages 22, 23, and 24.

21 And the prior art Switky does not disclose second holes provided in
22 the region extending through the conductive member. Figure 8 of Switky
23 just shows notches 32, 33 that are on either side of the conductive member.
24 They're not through the conductive member.

25 So we would argue that. That the second holes in the conductive
26 member are not shown in the prior art, and similarly, the second holes

1 overlapping the first holes that we're showing in figure 12 -- 71 and 72
2 overlapping, that's not shown at all in Switky. It doesn't have second holes
3 in a conductive member and he doesn't have overlapping first and second
4 holes.

5 And our third issue is claim 22. The issue of claim 22 is claim 22
6 recites the radiating plate has end portions formed integrally at the both ends
7 of a center portion of the radiating plate. Figure 3 of ours, our figure 3,
8 shows the resin wall bonded in a center portion of the radiating plate,
9 number 20.

10 Our resin wall is 40, radiating plate 20, and the end portions of
11 radiating plate 20 are exposed through the resin wall, so you can see them
12 sticking out on either side of the resin wall and through it. And Switky, the
13 prior art, shows only figure 2 that he has a bottom plate, he calls it, which is
14 similar to our radiating plate, number 14 in figure 2 of Switky.

15 And his, the plastic beads, which are supposedly somewhat similar to
16 our resin wall, they are at the ends of plate 14. 14 -- if 14 were a radiating
17 plate, it does not extend beyond end portions through -- they don't go
18 through the beads and they don't go really beyond the end, so there's no --
19 it's not equivalent to our end portions forming integrally at both ends of the
20 center portion.

21 So those are our three --

22 JUDGE BOALICK: I'm wondering, for claim 22 the Examiner says
23 essentially there's really no theoretical difference between the center portion
24 and the end portions. That boundary could occur anywhere. I'm looking at
25 page 7 of the answer.

26 And so the fact that Switky's figures 2 and 3A, B, and C show the

1 plastic bead 15 out at apparently a far distance along the plate 14, that
2 nevertheless could be considered at the center because the boundaries could
3 essentially occur anywhere. Why is that position of the Examiner wrong?

4 (Pause in the proceedings.)

5 JUDGE BOALICK: As further support, I might point to Switky in
6 column 3 right under the BRIEF DESCRIPTION OF THE DRAWING
7 around line 16 and 17. It says that the drawing is not to scale. Dimensions
8 have been exaggerated to more clearly portray the invention.

9 And then Switky goes on to say in column 6, around lines 15 to 18,
10 that a plastic bead 15 is applied and its location is inside, dashed line 22,
11 which represents the edges of the upper plate and lower plate.

12 So in other words, it seems to be saying that the plastic bead is applied
13 somewhere inside the edge, and since the drawings are not to scale, I'm just
14 wondering what's the error in the Examiner's position in equating where the
15 plastic bead 15 is bonded in Switky to the center portion bond that you're
16 claiming?

17 MS. VIEYRA: Well, we further claim that the end portions are
18 exposed through the resin wall. His number 14, his plate, is only underneath
19 the wall. There's nothing going through the wall.

20 JUDGE BOALICK: Okay.

21 MS. VIEYRA: There's nothing going through the wall. It's just under
22 it.

23 JUDGE BOALICK: I just want to know -- do you agree that the
24 plastic bead at Switky should be considered to be bonded at the center of
25 plate 14 or do you disagree with that position of the Examiner?

26 MS. VIEYRA: We disagree with that because if you have end

1 portions that are exposed through the wall, then that would make a center, so
2 we don't really agree that he's showing the plate, the end por -- we don't
3 agree that he has these end portions formed integrally at both ends of the
4 center portion, but even if he did, the end portions aren't being exposed
5 through the wall.

6 JUDGE BOALICK: And how is it that your end portions are exposed
7 through the wall? I wonder, could you just walk me through that one more
8 time in figures 3 and 4 because it looks like the radiating plate 20 goes
9 underneath the rectangular resin wall 40.

10 (Pause in the proceedings.)

11 MS. VIEYRA: I don't know. I don't have a good figure that shows
12 what we mean by through the resin wall. We have 8B. We have 8A. I
13 mean, 3 is like a cross-section, and then 8A and 8B.

14 8A is the plan view, so when you're looking down, you can see the --
15 you know, get the perspective, and B is not really very clear that the plate is
16 going through the resin wall. I'm not sure I can do that any more clearly.

17 And I guess we would like to just put on the record that we feel that
18 just because that the Examiner's argument about the edges, we feel that just
19 because something is inside an edge, is not the same as being positioned in
20 the center.

21 So we're talking about a center portion, and he's talking about well,
22 maybe it's a few inches in. Maybe it's a fraction from the edge. Maybe it's
23 not really to scale, but ours is in the center, and his is barely -- the prior art is
24 clearly not from the figures that are there.

25 JUDGE HAIRSTON: Counsel, your 20 minutes is up. Can I get you
26 to take a minute to sum up your positions then.

1 MS. VIEYRA: Sure. We just -- on the three issues for -- in sum, on
2 those three issues, we feel that our device is not obvious because Switky
3 does not have the same elements or his elements don't perform the same as
4 ours do, so there would be no -- we don't feel that there is really articulated
5 reasoning, which is the necessary reasoning to support the obviousness.

6 JUDGE HAIRSTON: Any other questions?

7 JUDGE HOFF: No.

8 JUDGE BOALICK: No. Thank you.

9 (Whereupon, the proceedings at 1:24 p.m. were concluded.)

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